SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1860

MAKAH DEVELOPMENT CORPORATION, et al.,
Petitioners,

v.

STANLEY T. SCOTT & CO., INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Respondent respectfully submits the following reasons why the Petition for Certiorari in this cause should not be granted.

I.

THERE IS NO CONFLICT IN THE APPELLATE COURTS

Petitioner points to no conflict between Circuits of the Appellate Courts on the issue it raises in its Petition. In fact, only the Sixth Circuit, in the decision of *Grow v. Loraine K,* 310 F.2d 547 (6th Cir. 1962), has even remotely touched upon the issue presented in the Petition in this

cause. There it was held that a suit to collect premiums for marine hull insurance which had been procured and placed in force was "maritime in nature"—a result consistent with the action of the Ninth Circuit in this case. That decision and the instant case are unique on the subject of brokers which have procured and placed into effect marine insurance.

II.

THE NINTH CIRCUIT DECIDED THIS CASE ON GROUNDS OTHER THAN THOSE PRESENTED FOR REVIEW IN THE PETITION FOR CERTIORARI

Petitioners seek review of the Circuit Court decision upon grounds which did not form the basis for the decision of that Court. Petitioners ask this Court to decide admittedly "close" and "subtle" distinctions as to maritime contract jurisdiction of a contract to "procure" marine insurance. However, the majority opinion of the Circuit Court (Pet. For Cert., Appendix A-1-2) based its affirmance of the admiralty jurisdiction of the District Court solely upon concepts of equitable subrogation of respondent to underwriters' claims upon the insurance policies for premiums due and owing. There is no dispute that claims of any party based upon a policy of marine insurance are admiralty claims. *Insurance Company v. Dunham*, 78 U.S. 1 (1870).

Admiralty has traditionally embraced the doctrine of equitable subrogation. *United States v. Aetna Ins. Co.*, 338 U.S. 336, 94 L.Ed. 171, 70 S.Ct. 207 (1949). Here the respondent Scott placed marine hull insurance at petitioners' request. The policies remained in effect for nine months upon petitioners' vessels, and Scott was finally

required to pay petitioners' premiums when they failed to do so, under the terms of a written brokerage contract with underwriters. The facts displayed a clear case for equitable subrogation by Scott to undewriters claims upon their policies for unpaid premiums, and it is on this basis that the Circuit Court upheld the District Court in this case.

Not having presented for review by this Court the issue upon which the Circuit Court based its decision, namely, equitable subrogation of Scott to underwriters' claims for premiums, this Court will not undertake to review same. *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 32 L.Ed.2d 95, 92 S.Ct. 1562 (1972); Supreme Court Rule 40(2).

III.

NO ISSUES OF CONSTITUTIONAL IMPORT ARE RAISED

Other than the irrelevant issue as to maritime contract jurisdiction, no issues of constitutional importance are raised by the Petition. Petitioners' raise an issue for review which, if decided, is unique and not general to the development of admiralty jurisdiction.

IV.

NO DISPUTE EXISTS AS TO THE DEBT DUE FROM PETITIONERS TO RESPONDENT

Liability was decided on Summary Judgment in the District Court. No appeal was taken from the finding of liability, petitioners relying solely upon their claims of jurisdictional infirmity. Therefore, since Petitioners' liability to Respondent is the law of this case, no possibility of harsh or unfair treatment will result from a denial of the Petition, it simply being a question of which Court enters the judgment upon the claim.

The Petition for Certiorari should not be granted.

Respectfully submitted,

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CHARLES E. WATTS
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Dated: June 28, 1974